

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Settlement Agreement") is made and entered into this (21<sup>st</sup>) day of July, 2003, by and between: the United Indians of All Tribes Foundation ("UIATF"); the Coalition to Save Discovery Park, comprised of the Magnolia Community Club, the Lawton Wood Community Club, and the Friends of Discovery Park (collectively, the "Community Groups"); and the Seattle Department of Parks and Recreation ("Seattle Parks"). The UIATF, the Community Groups and the Seattle Parks are sometimes collectively referred to herein the "Parties." This Settlement Agreement is intended to reflect agreement reached among the Parties on important issues relating to Discovery Park and construction of the People's Lodge at the Indian Cultural Center. This Settlement Agreement is based on the Memorandum of Agreement, approved and signed by the Parties on March 6, 2003.

## RECITALS

- A. On or about November 6, 1975 the UIATF and the City of Seattle (the "City") entered into Lease Agreement for a 99-year renewable lease of approximately 19.13 acres of land at Discovery Park in Seattle, Washington for the purpose of establishing and operating an Indian Cultural and Educational Center (the "Leased Area"). The Leased Area is more particularly described in the legal description attached hereto as Exhibit A and incorporated by this reference. The Lease Agreement was approved after the City had reviewed a Master Plan for development of the Leased Area. The first building constructed in the Leased Area was the Daybreak Star Arts Center, which opened in 1977.
- B. The UIATF seeks to construct an Indian Cultural-Educational center, commonly known as the "People's Lodge" within the Leased Area. On or about December 29, 1992 the UIATF submitted a Master Use Permit ("MUP") application to the City's Department of Construction and Land Use ("DCLU") for construction of the People's Lodge (the "Project"). The Project as originally proposed consisted of an approximately 148,000 square foot building designed to house a variety of uses, including, meeting rooms, exhibition galleries, food preparation area, gift shop, administrative offices, performing arts facility, and other associated spaces.
- C. Following submission of the MUP application, DCLU prepared a draft environmental impact statement pursuant to the State Environmental Policy Act ("SEPA"), Chapter 43.21C RCW, to analyze the potential for significant adverse environmental impacts from the Project. The Draft EIS for the Project was published in June 1999.
- D. In approximately November 1998 the Community Groups submitted a request to the Director of DCLU, asking the Director to render a code interpretation regarding whether certain proposed uses (that were to be part of the Project) constituted a "museum" and were therefore prohibited under the current zoning for the Leased Area.
- E. In June 1999 the Director of DCLU issued a code interpretation decision regarding the Project, concluding that the proposal fell within the definition of a "community center" under the existing Land Use Code and therefore did not constitute a "museum."
- F. The Community Groups appealed the Director's code interpretation decision to the City of Seattle Hearing Examiner. The City's Hearing Examiner issued a decision on September 14, 1999, substantially reversing the Director's code interpretation decision. The Examiner generally

concluded that components of the Project as proposed constituted a "museum," and were therefore prohibited under the current zoning applicable to the Leased Area.

- G. On or about October 4, 1999, the UIATF appealed the Examiner's Decision to the King County Superior Court pursuant to the Land Use Petition Act ("LUPA"), Chapter 36.70C RCW, which case is captioned as United Indians of All Tribes Foundation v. City of Seattle, et al., King County Superior Court Cause No. 99-2-22833-2SEA (the "Lawsuit").
- H. Since the filing of the Lawsuit, the Parties have agreed, and the Superior Court has approved, stays of the Lawsuit while the UIA TF and the City evaluated alternative sites for, and/or potential modifications to, the Project in an effort to resolve issues arising from the Lawsuit. Although no feasible alternative locations were identified, the UIATF and the City began evaluating revisions to the design of the Project to address the concerns that had been raised.
- I. The UIATF has since developed a new architectural concept for the Project. The site plan for the new design configures Daybreak Star and the Project buildings in a "consolidated campus concept" - hereinafter referred to as the Indian Cultural Center campus or ICC. The new ICC design results in a substantial reduction in the size, bulk, scale and footprint of the Project proposed in 1999. The "campus concept" ICC design also results in other improvements that will benefit Discovery Park and the UIA TF facilities.
- J. The UIATF and the Community Groups each believe that they would prevail in the pending Lawsuit, but at the same time recognize the desirability of resolving the existing disputes between the Parties without further expense or delay. The Parties seek through this Settlement Agreement to build on the progress represented by the efforts to redesign the Project and to address core issues of mutual interest. The Parties agree that this new proposal will help address the UIATF's desire to develop a high quality Project, as well as the interests of Park users and neighbors.
- K. On or about March 6, 2003 the Parties signed a Memorandum of Agreement (MOA) intended to reflect conceptual agreement on important issues relating to the ICC, the Project and Discovery Park. The Parties agreed to execute a Settlement Agreement based on the terms and conditions of the MOA.

NOW THEREFORE, in furtherance of the recitals set forth above and incorporated as terms of the Settlement Agreement by this reference and in consideration of the mutual promises and covenants set forth below and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the following:

## TERMS OF AGREEMENT

### **Section 1. Indian Cultural Center Campus and Park Improvements**

- 1.1 UIATF agrees that the Project shall be designed and constructed to comply with the following:
  - 1.1.1 Construction of new buildings for the Project on the ICC campus within the Leased Area shall not exceed 96,300 square feet of gross interior space and a footprint of 59,700 square feet. The actual size of the buildings may be less than these maximum

limits depending on the outcome of the normal permitting process.

- 1.1.2 Development of the Project (including building layout, footprint, elevations) will be consistent with the modified ICC site plan, attached hereto as Exhibit B (consisting of one page of text and sixteen pages of drawings). The site plan identifies the approximate location and footprint of the Project facilities and improvements within the ICC campus, and includes a brief description of the Project features. The site plan incorporates changes from the original design that will:

- 1.1.2.1 site new buildings closer to Texas Way and the New Parking Area described in paragraph 1.2.1 below, reducing potential impacts on the ponds area;

- 1.1.2.2 take greater advantage of site contours to reduce visual impacts to park users, neighbors, and wildlife; and

- 1.1.2.3 create a consolidated ICC campus.

- 1.1.3 The Community Groups shall designate one individual as the Community Contact and provide notice to UIA TF and Seattle Parks providing the name, address and phone number of the Community Contact. The Community Contact shall be notified by Seattle Parks of relevant People's Lodge development proposals and applications requiring formal City action. The Community Contact shall be provided with a copy of all applications, plans, drawings and other materials related to the permitting and construction of the Project (the "Application Materials") at the time that formal City action is requested.

- 1.2 The Parties agree to the goal of implementing the following improvements (hereinafter referred to as the "Park Improvements") in Discovery Park, and, to that end, the Parties agree to use their best faith efforts to secure funding for and to implement these improvements, recognizing that implementation is contingent upon future environmental review, permitting, legislative action and funding.

- 1.2.1 Create a new principal parking area with approximately 200 spaces off Texas Way, immediately south of the Great Circle (the "New Parking Area"). The New Parking Area may be constructed in a phased manner, but, in any case, must be able to address the required parking needs of the ICC facilities and serve as the primary parking area for ICC events. The New Parking Area will be screened by vegetation to visually separate it from the meadow area. The general public will also have access to the new lot. UIATF will have priority access to parking in the New Parking Area during major events (as defined in Section 2.2) at the ICC.

- 1.2.2 Connect the New Parking Area and the existing parking area west of Daybreak Star Center with a new connecting access road.

- 1.2.3 Improve the section of Illinois Avenue south of the north parking circle and Texas Way to create safe and screened access to the New Parking Area and ICC campus. Specifically, Seattle Parks, working in conjunction with Seattle Department of Transportation, will provide for safe pedestrian crossings at the junction of the Loop Trail and Illinois Avenue and across Texas Way to provide access to the Wolf Tree Nature Trail and the ponds in the ICC Leased Area. Sidewalks will be provided along Texas Way. Vehicular restriction on Texas Way will include traffic calming devices.

- 1.2.4 Remove approximately 40 to 50 percent of the impervious surface area at the existing north parking lot next to the meadow area. Reconfigure and re-stripe the remaining parking area for maximum efficiency (with a target of approximately 120 to 150 spaces, as needed to meet DCLU Code requirements).
- 1.2.5 Expand the meadow area and restore important natural features including daylighting two streams: one that runs underneath the existing north parking lot and one that is culverted under the west end of the meadow. Create forested riparian corridors along streams that connect the forested area to the south with the ICC forested area to the north. Daylighting and restoring the riparian area to the west will have the additional benefit of helping to screen the New Parking Area.
- 1.2.6 Close Illinois Avenue from the north parking lot traffic circle to Daybreak Star Center (subject to the need to access utilities). See attached site plan in Exhibit B for details.
- 1.2.7 Remove pavement from the Illinois Avenue right-of-way and restore it to a natural condition.
- 1.2.8 Plant appropriate vegetation along the northern boundary of the Park to provide greater screening between the ICC and the Lawton Wood neighborhood.
- 1.3 The Parties agree that the following measures (hereinafter referred to as "Implementation Measures") shall be implemented as soon as legally and practically feasible after a final Environmental Impact Statement (under SEP A) on the Project is issued.
  - 1.3.1 Seattle Parks and UIATF shall execute and record a renewable 30-year conservation easement in the form attached hereto as Exhibit C (the "Conservation Easement"). The Conservation Easement shall be effective at the completion of construction of the New Parking Area and shall burden the portion of the Leased Area known as the ponds and associated natural area that have been restored and enhanced by the UIA TF. The Conservation Easement, which will incorporate a 100 foot buffer west of the ponds and stream, will be protected by the City and UIA TF in a natural condition, allowing for minor cultural and informational improvements, such as a bench or small interpretive signs, which complement the physical integrity of the natural surroundings, and will continue to be open to public use and enjoyment and traditional Native American cultural activities throughout the terms of the easement. During the renewable 30-year easement period, this area will be jointly administered by the City and the UIA TF. A map of the Conservation Easement area is attached to Exhibit C.
  - 1.3.2 Seattle Parks shall grant UIA TF an access easement in the form attached hereto as Exhibit E (the "Access Easement"). The Access Easement shall ensure that the UIATF will be granted access via Texas Way to the ICC and access to the New Parking Area described in Section 1.2. above.
  - 1.3.3 Seattle Parks shall draft amendments to the Discovery Park Long Range Development Plan (the "Development Plan") that include the Park improvements and actions needed to implement the Settlement Agreement and shall seek City Council approval of a Resolution adopting such amendments (the "Development Plan Resolution").
  - 1.3.4 Seattle Parks shall draft amendments to the Park and Recreation Plan 2000 (the "Plan 2000") identifying the capital improvements needed to implement this Settlement

Agreement, and shall seek City Council approval of a Resolution adopting such amendments (the "Plan 2000 Resolution"). The Development Plan Resolution and the Plan 2000 Resolution are together referred to as the "Resolutions".

- 1.4 Seattle Parks agrees to initiate a code amendment to allow development of the Project as proposed in this Settlement Agreement in the form attached hereto as Exhibit F (the "Text Amendment"). The Text Amendment will be initiated after the Settlement Agreement has been signed by the Parties. The Text Amendment shall be proposed to become effective only upon the later of: the date that the Superintendent of Seattle Parks files with the City Clerk a written certification that the Implementation Measures have been implemented and the Resolutions have been approved by the City Council (the "Certification"); or thirty (30) days from and after the ordinance enacting the code amendment is approved by the Mayor, but if not approved and returned by the Mayor within ten (10) days of its presentation, it shall take effect as provided by SMC 1.04.020 . In the event that the Text Amendment is approved by the City Council to be in effect prior to date of the Certification, the Parties agree that construction of the Project shall not start unless and until the Certification is filed with the City Clerk.
- 1.5 The Parties agree to execute and present to the Court for entry a Stipulation in the form attached hereto as Exhibit G to dismiss the Lawsuit with prejudice upon (1) City Council approval of the Text Amendment substantially in the form of Exhibit F and (2) the expiration of any time period for petition or appeal of the ordinance adopting the Text Amendment to either Superior Court or the Growth Management Hearings Board without such petition or appeal having been filed, or (3) if such petition or appeal is filed, the date that a final and binding resolution of the petition or appeal fully affirms the City Council's adoption of the Text Amendment.

## **Section 2. Use of ICC Facilities and Site**

- 2.1 The Parties agree that the Potlatch House shall have a maximum posted seating capacity of no more than 850. The legal seating capacity may be less than this amount, depending on the outcome of the normal City permitting process.
- 2.2 Seattle Parks and UIATF shall develop, in consultation with Seattle Transportation Department, and with public notice and opportunity to comment, a transportation and parking plan for major events (those involving more than 650 individuals) in one or more of the buildings on the ICC campus. It is anticipated that events with attendance over 650 will require off-site parking with shuttle service.
- 2.3 Events at ICC facilities will continue to be subject to applicable State, City and Park regulations, ordinances, and Lease provisions, (e.g., regarding noise, hours of operation, alcohol consumption, etc.). Activities at the People's Lodge may be further addressed in the project EIS. Nothing in this Agreement will be construed to waive or seek modification of City or Park regulatory requirements, or to allow prohibited activities, unless explicitly so stated in this Agreement.
- 2.4 All Parties commit to being "good neighbors," respecting each other's rights, interests and peaceful enjoyment of property. Seattle Parks, as deemed appropriate, will initiate discussions among UIATF, Park users, and neighbors to address issues and concerns in a timely manner, improve communication and mutual respect, and avoid conflicts.

## **Section 3. Process and Implementation**

- 3.1 Seattle Parks will be an active participant in the design process and will help to ensure that

appropriate provisions of this Settlement Agreement are proposed for the Discovery Park Long Range Development Plan and the Park and Recreation Plan 2000. If the Resolutions are adopted, Seattle Parks shall take actions within its authority to implement the improvements for which it is responsible in this Settlement Agreement.

- 3.2 Consistent with the general principle that the Parties commit to working diligently, cooperatively, and in good faith to meet their respective responsibilities to implement this Settlement Agreement, the appropriate parties will take actions within their authority to secure the funding, legislative, and administrative changes needed to implement the Agreement, understanding that the Parties to the Agreement cannot bind legislative bodies or outside government agencies.
- 3.3 The anticipated implementation steps, including a code amendment to permit construction of the Project and a draft schedule, are attached hereto as Exhibit D.
- 3.4 The Parties agree that the New Parking Area shall be constructed in conjunction with the Project to accommodate the parking needs of the Project and existing ICC facilities and that Park Improvements will be completed as follows:
  - 3.4.1 Removal of Illinois Avenue, as identified in paragraphs 1.2.6, 1.2.7 and 1.2.8, will be completed within one year of the completion of the improved access *for* the ICC via Texas Way as identified in paragraphs 1.2.2 and 1.2.3;
  - 3.4.2 Reduction in the size of the existing North Parking Area, as identified in paragraph 1.2.4, and expansion and restoration of the meadow in a manner consistent with the adjacent meadow, including new vegetative screening between the north meadow and the existing parking area, will be completed within one year of the substantial completion of the New Parking Area;
  - 3.4.3 Daylighting the two streams and creating forested riparian corridors along the streams, as identified in paragraph 1.2.5, will be incorporated into the Long Range Development Plan and will be implemented as funds are made available, subject to environmental review and permitting.
- 3.5 The Parties agree to the following non-opposition terms.
  - 3.5.1 The Community Groups agree not to oppose any *future* governmental approvals, including, but not limited to, permits or licenses, code amendments, grants or other funding proposals, or any other governmental actions (hereinafter "Governmental Approvals") which UIA TF may seek, or which any government agency in the future may grant for construction or operation of the Project consistent with the terms of this Agreement, and to not in any way aid, assist or cooperate with any individual, group, or entity in any appeal or other challenge to either the Project or to Governmental Approvals. The Community Groups reserve the right to request imposition of conditions to such Governmental Approvals, not inconsistent with the terms of this Agreement, to mitigate environmental impacts identified in the environmental documents and to challenge Government Approvals to the Seattle Hearing Examiner if UIATF does not agree to implement the requested conditions and the conditions are not imposed. The Parties agree that the decision of the Hearing Examiner will be accepted as the final determination and no further appeal by any Party will be permitted. The Community Groups do not waive their right to insist that the Project

be constructed in conformance with the terms of this Agreement nor are they precluded from opposing modifications to the design or use of the Project, when such modification would be inconsistent with the terms of this Agreement. In the event DCLU requires modifications to the Project, the Parties agree that any opposition to such changes in the Project will be limited to these modifications alone and that a decision of the Hearing Examiner on such matters will be accepted as the final determination and no further appeal by any Party will be permitted.

- 3.5.2 The Community Groups and UIATF agree not to oppose amendments to the Discovery Park Long Range Development Plan, to the Park and Recreation Plan 2000 and to any other government plans, proposed by Seattle Parks 'or other City agencies to implement this Agreement ("Government Plan Amendments"). The Community Groups and UIATF reserve the right to oppose any Government Plan Amendments inconsistent with the terms of this Agreement and to oppose any provisions of such Government Plan Amendments unrelated to the terms of this Agreement.
- 3.5.3 To the extent feasible, the implementation measures cited in Section 1.3 and 1.4 will be simultaneously executed.

#### **Section 4. General Provisions**

- 4.1 **Entire Agreement.** This instrument and the attached exhibits contains the entire agreement between the Parties with respect to the subject matter hereof and shall not be modified or amended in any way except in writing signed by the respective Parties or their successors in interest or assigns.
- 4.2 **Remedies.** The Parties to this Settlement Agreement have the right to exercise any and all of the following remedies, singly or in combination, in the event another party violates any provision of this Settlement Agreement: commencing an action for equitable or other relief; 'and seeking specific performance of any provision that reasonably lends itself to such remedy. The substantially prevailing party in such an action shall be entitled to recover its reasonable costs and attorney's fees, including those incurred in any appeal from the judgment of a lower court.
- 4.3 **Notice.** Any notice or other communication of any sort required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given three days after being mailed by certificated mail to the persons or officers listed below or on the date when the communication is personally delivered to the persons or officers listed below:

To UIATF:

And to:

To the Community Groups:

Current President  
Friends of Discovery Park  
P.O. Box 98139  
Seattle, W A 98199

Current President  
Magnolia Community Club  
P.O. Box 99564  
Seattle, WA 98199

Ms. Marianne Sorich Francis, President  
Lawton Wood Home Owners Association  
557 Lake Washington Blvd. E.  
Seattle, W A 98112

And to:

Mr. Brent Carson  
Buck & Gordon LLP  
902 Waterfront Place  
1011 Western Avenue  
Seattle, WA 98104-1097

To the City:

And to:

- 4.4 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of this Settlement Agreement shall be in King County Superior Court.
- 4.5 **Headings.** The headings and subheadings contained in this instrument are solely for the convenience of the Parties and are not to be used in construing this Agreement.
- 4.6 **Counterparts.** This Settlement Agreement may be executed in counterparts, all of which shall be deemed an original as if signed by all Parties.
- 4.7 **Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the Parties hereto and any successor in interest to the Leased Area. This Settlement Agreement shall terminate upon expiration or other termination of the lease between UIA TF or its successor to the leasehold interest in the Leased Area and the City. UIA TF agrees that the burdens created by the Settlement Agreement shall be a covenant attached to its leasehold interest in the Leased Area and is intended to run with the land. The provisions of this Agreement shall be recorded with respect to the Leased Area.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed the day and year first above written.

Exhibits:

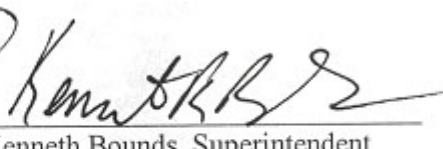
- A. Legal Description of Leased Area



- B. Site Plan for Revised Project and Brief Description of Project Features
- C. Conservation Easement and map
- D. Anticipated Implementation Steps and Schedule
- E. Access Easement
- F. Text Amendment
- G. Stipulation



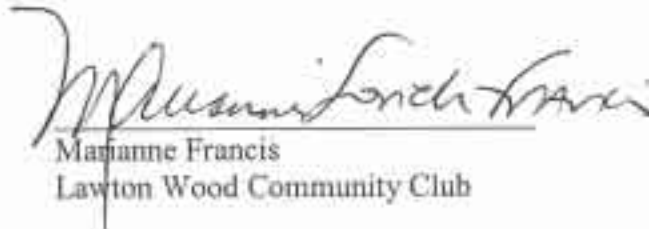
Michelle Sanidad, Executive Director  
United Indians of All Tribes Foundation



Kenneth Bounds, Superintendent  
Seattle Parks and Recreation  
Department




Joseph Straus  
Lawton Wood Community Club



Marianne Francis  
Lawton Wood Community Club



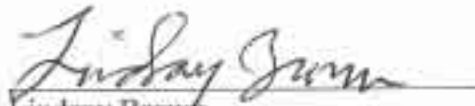
Valerie Cholvin  
Friends of Discovery Park



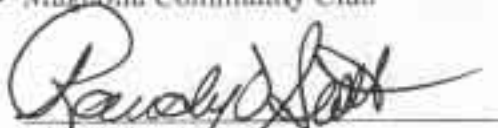
Phil Vogelzang  
Friends of Discovery Park



Jose Montano  
Magnolia Community Club



Lindsay Brown  
Magnolia Community Club



Randy Scott  
Chair, Board of Directors  
United Indians of All Tribes Foundation

## **EXHIBIT A**

### **Legal Description of Leased Area**

#### Legal Description of Lease to UIATF

Beginning at the meander post between Section 9 and Section 10, Township 25 North, Range 3 East, W.M.;  
thence north 48°09'38" east along the meander line in said Section 10, 725.50 feet;  
thence north 59°34'20" east, 73.36 feet to a point on the west line of a tract of land deeded by Christian Scheuerman and Kate Scheuerman to Mary Scheuerman, September 19, 1890 and recorded in the office of the County Auditor of King County, Washington, in Volume 14 of Deeds, page 114;  
thence south 0°08'09" east, 523.29 feet to a Government Monument on the south line of Government Lot 4, of said Section 10;  
thence north 89°46'59" west, 30.006 feet to the east line of U.S.C.G. Antenna Tract;  
thence south 0°08'09" east, 30.092 feet to a monument which is the southeast corner of U.S.C.G Antenna Tract and the True Point of Beginning. Thence continuing south 0°08'09" east, 36.918 feet;  
thence south 89°46'58" east, 608.508 feet;  
thence north 82°27'22" east, 98.724 feet;  
thence north 86°55'03" east, 87.87 feet;  
thence south 7°58'59.2" west, 337.713 feet;  
thence south 18°04'46.1" west, 624.235 feet;  
thence north 70°21'46.3" west, 353.429 feet;  
thence westerly along a curve to the right having a radius of 647.864 feet, the center of which bears north 25°55'25.1" east, an arc distance of 154.299 feet to a point of tangency;  
thence north 50°25'50" west, 50.00 feet to a point of curvature;  
thence northwesterly along a curve to the left having a radius of 334.558 feet, the center of which bears south 39°34'10.3" west, on arc distance of 216.002 feet;  
thence north 70°13'02" west, 367.306 feet;  
thence north 10°53'11" east, 240.665 feet;  
thence north 21°41'17.4" east, 195,051 feet;  
thence north 41°20'54" east, 186.784 feet to the west line of said U.S.C.G. Antenna Tract;  
thence south 0°08'09" east along said westerly line, 42.00 feet to the south line of said U.S.C.G. Tract;  
thence south 89°46'59" east along said south line, 250.00 feet to the point of beginning.

Area; 830237.4 sq ft  
19.06 acres